

The Court of the Civil Judge(Jr. Divn.), Bidhannagar
Present: Dhrubajyoti Bhattacharyya, Civil Judge(Jr. Divn.), Bidhannagar
J.O.CODE WB 1177

Title Suit No. 231 of 2023
C.I.S.No. 231 of 2023

Order No.2 dt.13.07.2023.

The record is put up today on application on behalf of the plaintiff. The record is taken up for hearing of application preferred in terms of Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908. Issue notice calling upon the defendant to show cause within 20 days from the receipt thereof as to why the order of temporary injunction shall not be granted against them. As per the office report caveat has not been filed with respect to the claim. This court has heard the submissions made by Ld. Counsel appearing for the plaintiff who has submitted that the plaintiff is a developer engaged by defendant no.2 for raising a construction on the suit property which is situated at Purba Sinthee mouza at holding number 344 M.C.Garden Road, P.S.Nagerbazar, District North 24 Parganas under South Dum Dum Municipality at Ward No. 14, R.S.No. 11, Dag No. 623/1490, Khatian No. 951 by way of agreement dt. 16.03.22 with a stipulation that the defendant no.2 shall be entitled to the entire ground floor, entire first floor, entire second floor and 50% of the fifth floor. Accordingly the plaintiff has almost completed the work of construction of the building. Since the month of April, 2023 on the basis of a conspiracy between defendant no. 1 and 2, the said defendants are trying to cheat the plaintiff developer and create obstruction in a clear breach of the contract. Ld. Counsel has produced the agreement dt. 16.03.2022 between the plaintiff and defendant no.2, copy of mutation certificate issued in favour of defendant no.2 by South Dum Dum Municipality, copy of tax receipt issued by the said Municipality in favour of defendant no.2, a plan sanctioned by the Chairman of the said Municipality on 29.09.22 for the construction of the building and a copy of the complaint filed by Ld. Advocate Kuheli Gayen to the Officer in charge of Nagerbazar P.S on behalf of the plaintiff regarding disruption of the work at the suit property by police officers and asking for details of the reasons for interference with the work of construction. This court has perused the record in the light of the document furnished as evidence. This court finds that in Para-16 Page-8 of the agreement between the plaintiff and defendant no.2 it has been clearly mentioned that any dispute between them shall be resolved through arbitrator appointed jointly. In this premise this court finds that the balance of convenience suggests that the defendants be given an opportunity of being heard before adjudicating on the application for temporary injunction U/o-XXXIX Rule 1 and 2 of CPC. The prayer for temporary injunction is required to be heard expeditiously giving an opportunity of being heard to the defendants.

Hence, it is

Ordered

that the prayer for grant of ad-interim order of temporary injunction U/o-XXXIX Rule 1 and 2 of the C.P.C be and the same is dismissed. The plaintiff is hereby directed to furnish the requisites for issuance of summons upon the defendants.

DA is hereby directed to update the case in CIS accordingly.
Fix 02.08.2023 for S.R and appearance.

Civil Judge (Jr. Divn.)
Bidhannagar